

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:

SMILEDIRECTCLUB, INC., *et al.*,¹

Debtors.

Chapter 7

(Previously Chapter 11)

Case No. 23-90786 (CML)

(Jointly Administered)

**DIP AGENT’S WITNESS AND EXHIBIT LIST
FOR HEARING ON FEBRUARY 14, 2025 AT 9:00 A.M. (CT)**

Cluster Holdco LLC, in its capacity as administrative agent and collateral agent (the “DIP Agent”), by and through its respective undersigned counsel, hereby files this Witness and Exhibit List regarding the hearing scheduled for Friday, February 14, 2025 at 9:00 a.m. (CT) before the Honorable Christopher Lopez at the United States Bankruptcy Court for the Southern District of Texas, Courtroom 401, 515 Rusk Street, Houston, Texas 77002 (the “Hearing”).

WITNESS LIST

At the hearing, the DIP Agent intends to call the following witnesses:

1. Allison D. Byman, Chapter 7 Trustee.
2. Jeffrey W. McKenna.
3. Raniero D’Aversa.
4. Any witness on the Trustee’s² witness list.

¹ A complete list of each of the Debtors in these chapter 7 cases may be obtained on the website of the Debtors’ solicitation agent (as defined herein) at <https://restructuring.ra.kroll.com/SmileDirectClub>. The location of Debtor SmileDirectClub, Inc.’s principal place of business and the Debtors’ service address in these chapter 7 cases is 1530 Antioch Pike, Antioch, Tennessee 37013.

² Capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the *DIP Agent’s Objection to the Renewed Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee* [Dkt. No. 972].

5. Any witness on the Individual Defendants' witness list.
6. Any witness called by any other party.
7. Rebuttal witnesses as necessary.

The DIP Agent reserves the right to call any witness necessary to establish the authenticity or admissibility of documents, call any witness identified by any other party, and cross examine any witness called by another party. The DIP Agent reserves the right to supplement or amend this witness list and to identify additional witnesses prior to the Hearing.

EXHIBIT LIST

A list of exhibits on which the DIP Agent may seek to introduce or rely at the Hearing is set forth below.

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
1.	Transcript of November 7, 2023 Hearing [Dkt. No. 331]				
2.	Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Granting Liens and Providing Claims with Superpriority Administrative Expense Status, (III) Authorizing the Use of Cash Collateral, and (IV) Modifying the Automatic Stay [Dkt. No. 296]				
3.	HPS Exhibit 31: Letter Dated November 17, 2023 [Dkt No. 567-21, Filed Under Seal]				
4.	December 18, 2023 Update & Recommendations Presentation to the Special Committee [Dkt. No. 572-39, Filed Under Seal]				
5.	Transcript of Sale Hearing, January 18, 2024 [Dkt No. 600]				
6.	Transcript of Sale Hearing, January 24, 2024 [Dkt No. 619]				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
7.	SDC_001060 – SDC_001061 (Handwritten Notes of Allison Byman from 1/24/24 Meeting) [Filed Under Seal]				
8.	SDC_000701 – SDC_000702 (Email thread from Randy Williams to Allison Byman, Aaron Power, and Joshua W. Wolfshohl, dated January 31, 2024) [Filed Under Seal]				
9.	Emergency Joint Motion of Chapter 7 Trustee and DIP Agent (I) Authorizing (A) Consensual Use of Cash Collateral and (B) the Exercise of Certain Rights and Remedies Under the Final DIP Order, and (II) Granting Related Relief [Dkt. No. 638]				
10.	SDC_001062 – SDC_001069 (Handwritten Notes of Allison Byman from February 13, 2024 Meeting) [Filed Under Seal]				
11.	Agreed Order (I) Authorizing (A) Consensual Use of Cash Collateral and (B) the Exercise of certain Rights and Remedies Under the Final DIP Order, and (II) Granting Related Relief [Dkt. No. 655]				
12.	Notice of First Monthly Fee Statement of Porter Hedges LLP, Counsel for Chapter 7 Trustee Allison D. Byman, for the Period from February 1, 2024 through February 29, 2024 [Dkt. No. 699]				
13.	SDC_000186 – SDC_000187 (Email thread from Allison Byman to Randy Williams and Joshua W. Wolfshohl, dated March 6, 2024) [Filed Under Seal]				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
14.	SDC_000659 – SDC_000670 (Email thread from Reed Willis to Joshua W. Wolfshohl, Allison Byman, Gregory Pesce, Aaron Power, and Randy Williams dated March 6, 2024) [Filed Under Seal]				
15.	SDC_000618 (Email from Eric Van Horn to Allison Byman and Randy Williams dated March 22, 2024) [Filed Under Seal]				
16.	SDC_000653 (Letter dated March 22, 2024) [Filed Under Seal]				
17.	SDC_000983 (Email thread from Allison Byman to Eric Van Horn and Randy Williams dated April 1, 2024) [Filed Under Seal]				
18.	Stipulation and Agreed Order Extending Certain Consensual Uses of Cash Collateral Through March 2024 [Dkt. No. 787]				
19.	Stipulation and Agreed Order Extending Certain Consensual Uses of Cash Collateral Through April 2024 [Dkt. No. 800]				
20.	Stipulation and Agreed Order Extending Certain Consensual Uses of Cash Collateral Through May 2024 [Dkt. No. 811]				
21.	Fifth Monthly Fee Statement of Porter Hedges LLP, Counsel for Chapter 7 Trustee, Allison D. Byman, for the Period from June 1, 2024 through June 30, 2024 [Dkt. No. 820]				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
22.	Stipulation and Agreed Order Extending Certain Consensual Uses of Cash Collateral, Abandonment of Non-Debtor Foreign Subsidiaries Equity Interests, and Related Matters [Dkt. No. 837]				
23.	Chapter 7 Trustee's Motion for Entry of an Order (I) Authorizing and Approving Litigation Arrangement, (II) Granting Priming Liens and Providing Claims with Superpriority Status, (III) Approving the Payment of Certain Related Fees and Expenses, and (IV) Granting Related Relief [Dkt. No. 844]				
24.	Declaration of Allison D. Byman in Support of Chapter 7 Trustee's Motion for Entry of an Order (I) Authorizing and Approving Litigation Arrangement, (II) Granting Priming Liens and Providing Claims with Superpriority Status, (III) Approving the Payment of Certain Related Fees and Expenses, and (IV) Granting Related Relief [Dkt. No. 844-1].				
25.	Motion for Entry of an Order Authorizing the Chapter 7 Trustee to Redact and File Under Seal Certain Information Contained in the Litigation Finance Motion and Attached Exhibits [Dkt. No. 846]				
26.	Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee [Dkt. No. 847]				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
27.	D'Aversa Declaration (Exhibit A) to Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee [Dkt. No. 847-1]				
28.	DIP Agent's Omnibus Objection to Chapter 7 Trustee's (i) Nonconsensual Priming Litigation Finance Motion; (ii) Redaction Motion; and (iii) Orrick Retention Application [Sealed Version: Dkt. No. 857 / Public Version: Dkt. No. 859]				
29.	Declaration of Ben Winger in Support of DIP Agent's Omnibus Objection to Chapter 7 Trustee's (i) Nonconsensual Priming Litigation Finance Motion; (ii) Redaction Motion; and (iii) Orrick Retention Application [Sealed Version: Dkt. No. 858 / Public Version: Dkt. No. 860]				
30.	Chapter 7 Trustee's Omnibus Reply to DIP Agent's Objection to Chapter 7 Trustee's (I) Litigation Finance Motion, (II) Redaction Motion, and (III) Orrick Retention Application [Sealed Version: Dkt. No. 873 / Public Version: Dkt. No. 875]				
31.	Declaration of David Litterine-Kaufman in Support of Chapter 7 Trustee's Omnibus Reply [Dkt. No. 876]				
32.	Deposition Transcript of Allison Byman, dated September 3, 2024 [Filed Under Seal]				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
33.	DIP Agent's Emergency Motion for Leave to File a Sur-Reply to Reply in Support of Chapter 7 Trustee's (I) Nonconsensual Priming Litigation Finance Motion, (II) Redaction Motion, and (III) Orrick Retention Application [Sealed Version: Dkt. No. 884 / Public Version: Dkt. No. 885]				
34.	Chapter 7 Trustee's Emergency Motion for Leave to File a Response to the Sur-Reply of the Insider DIP Agent to the Chapter 7 Trustee's Omnibus Reply in Support of Chapter 7 Trustee's (I) Litigation Finance Motion, (II) Redaction Motion, and (III) Orrick Retention Application [Dkt. No. 892]				
35.	Declaration of Mark Franke in Support of Motion for Leave to File Response to Sur-Reply of the Insider DIP Agent to the Chapter 7 Trustee's Omnibus Reply in Support of Chapter 7 Trustee's (I) Litigation Finance Motion, (II) Redaction Motion, and (III) Orrick Retention Application [Dkt. No. 893]				
36.	Transcript of October 1, 2024 Hearing				
37.	Transcript of October 11, 2024 Hearing [Dkt. No. 913]				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
38.	Order Denying Chapter 7 Trustee's Motion for Entry of an Order (I) Authorizing and Approving Litigation Arrangement, (II) Granting Priming Liens and Providing Claims with Superpriority Status, (III) Approving the Payment of Certain Related Fees and Expenses, and (IV) Granting Related Relief [Dkt. No. 907]				
39.	Order Denying Application to Employ Special Litigation Counsel for Chapter 7 Trustee [Dkt. No. 908]				
40.	Transcript of October 18, 2024 Hearing [Dkt. No. 916]				
41.	Emergency Motion for Order Confirming Chapter 7 Trustee is Authorized and Empowered to Waive the Debtors' Attorney/Client Privileges [Dkt. No. 920]				
42.	Deposition Transcript of Allison Byman dated December 6, 2024 [Dkt. No. 953-1]				
43.	Notice of Appeal [Dkt. No. 921]				
44.	Objection / DIP Agent's Limited Objection and Reservation of Rights to Securities' Plaintiffs' Emergency Motion for Order Confirming Chapter 7 Trustee is Authorized and Empowered to Waive the Debtors' Attorney/Client Privileges [Dkt. No. 952]				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
45.	Declaration of Ben Winger in Support of Objection / DIP Agent's Limited Objection and Reservation of Rights to Securities' Plaintiffs' Emergency Motion for Order Confirming Chapter 7 Trustee is Authorized and Empowered to Waive the Debtors' Attorney/Client Privileges [Dkt. No. 953]				
46.	Renewed Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee [Dkt. No. 957]				
47.	D'Aversa Declaration (Exhibit A) to Renewed Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee [Dkt. No. 957-1]				
48.	Order of Dismissal [Dkt. No. 969]				
49.	DIP Agent's Objection to the Renewed Application for Entry of an Order Authorizing the Retention and Employment of Orrick, Herrington & Sutcliffe LLP as Special Litigation Counsel to the Chapter 7 Trustee [Dkt. No. 972]				
50.	Motion to Adjourn Trustee's Renewed Application for Retention of Orrick or, Alternatively, Objection to Trustee's Renewed Application for Retention of Orrick [Dkt. No. 973]				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
51.	Declaration of Michael B. Silverstein in Support of Interested Parties' Motion to Adjourn Trustee's Renewed Application for Retention of Orrick or, Alternatively, Objection to Trustee's Renewed Application for Retention of Orrick [Dkt. No. 974]				
52.	Deposition Transcript of Allison Byman dated January 27, 2025				
53.	Chapter 7 Trustee's Omnibus Reply in Support of Renewed Orrick Retention Application [Dkt. No. 976]				
54.	Declaration of Allison D. Byman in Support of Chapter 7 Trustee's Omnibus Reply in Support of Orrick Retention Application [Dkt. No. 977]				
55.	Declaration of Jeffrey W. McKenna in Support of Chapter 7 Trustee's Omnibus Reply in Support of Renewed Orrick Retention Application [Dkt. No. 978]				
56.	Emergency Motion to Compel Orrick to Comply with Subpoena [Dkt. No. 979]				
57.	Silverstein Declaration in Support of Emergency Motion to Compel Orrick to Comply with Subpoena [Dkt. No. 980]				
58.	Order Adjourning Hearings and Setting Status Conference [Dkt. No. 982]				
59.	Deposition Transcript of Jeffrey McKenna dated January 30, 2025				
60.	DIP Agent's Emergency Motion to Compel Discovery [Dkt. No. 985]				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
61.	Declaration of Ben Winger in Support of DIP Agent's Emergency Motion to Compel Discovery [Dkt. No. 986]				
62.	Response in Opposition to Insider Defendants' Emergency Motion to Compel Orrick to Comply with Subpoena [Dkt. No. 987]				
63.	Declaration of Nick Poli in Support of Response in Opposition to Insider Defendants' Emergency Motion to Compel Orrick to Comply with Subpoena [Dkt. No. 988]				
64.	Omnibus Objection of Chapter 7 Trustee and Non-Party Orrick in Opposition to Insider DIP Agent's Emergency Motion to Compel [Dkt. No. 992]				
65.	Transcript of February 3, 2025 Status Conference [Dkt. No. 998]				
66.	Update Pursuant to Court Directive of Non-Party Orrick, Herrington, & Sutcliffe LLP [Dkt. No. 999]				
67.	Trustee's Objections and Responses to First Set of Interrogatories and Requests for Production to the Chapter 7 Trustee				
68.	Non-party Orrick, Herrington & Sutcliffe LLP's Responses and Objections to First Set of Interrogatories and Requests for Production				
69.	Non-party Orrick, Herrington, & Sutcliffe LLP's Supplemental Responses and Objections to First Set of Interrogatories and Requests for Production				
70.	Any exhibit listed by any other party				

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
71.	Any exhibit necessary for impeachment and/or rebuttal purposes.				
72.	Any document or pleading filed in the above-captioned main cases.				

The DIP Agent reserves the right to further supplement or amend this Exhibit List, including to add and/or remove documents prior to the Hearing.

RESERVATION OF RIGHTS

The DIP Agent reserves the right to call, refer to, or seek to introduce one or more, or none, of these witnesses or exhibits listed above at the Hearing. The DIP Agent also reserves the right to supplement, add to, subtract from, or otherwise amend this Witness and Exhibit List at any time prior to the Hearing.

[Remainder of page intentionally left blank]

Dated: February 12, 2025

Respectfully submitted,

/s/ James P. Muenker

James P. Muenker (Texas Bar No. 24002659)

DLA PIPER LLP (US)

845 Texas Avenue, Suite 3800

Houston, Texas 77002

Telephone: (214) 743-4500

Facsimile: (214) 743-4545

Email: james.muenker@us.dlapiper.com

-and-

Brett Ingerman (admitted *pro hac vice*)

Dale K. Cathell (admitted *pro hac vice*)

DLA PIPER LLP (US)

650 South Exeter Street, Suite 1100

Baltimore, Maryland 21202

Telephone: (410) 580-4177

Facsimile: (410) 580-3177

Email: brett.ingerman@us.dlapiper.com

dale.cathell@us.dlapiper.com

-and-

W. Benjamin Winger (admitted *pro hac vice*)

444 West Lake Street, Suite 900

Chicago, Illinois 60606

Telephone: (312) 368-4000

Facsimile: (312) 236-7516

Email: benjamin.winger@us.dlapiper.com

Counsel for the DIP Agent and the DIP Lenders

CERTIFICATE OF SERVICE

I, James Muenker, hereby certify that on this 12th day of February 2025, I caused a true and correct copy of the foregoing Witness and Exhibit List to be to be served this day on parties requesting transmission of Notices of Electronic Filing generated by CM/ECF. Additionally, a copy was served on the following parties via electronic transmission:

Ryan C. Wooten
Raniero D'Aversa, Jr.
David Litterine-Kaufman
Nicolas Poli
Mark Franke
Orrick, Herrington Sutcliffe LLP
Email: rwooten@orrick.com
rdaversa@orrick.com
dlitterinekaufman@orrick.com
npoli@orrick.com
mfranke@orrick.com

David A. Rammelt
Michael D. Meuti
Andrew G. Fiorella
Michael B. Silverstein
Benesch, Friedlander, Coplan & Aronoff, LLP
Email: drammelt@beneschlaw.com
mmeuti@beneschlaw.com
afiorella@beneschlaw.com
msilverstein@beneschlaw.com

/s/ James P. Muenker
James P. Muenker (Texas Bar No. 24002659)
DLA PIPER LLP (US)
845 Texas Avenue, Suite 3800
Houston, Texas 77002
Telephone: (214) 743-4500
Facsimile: (214) 743-4545
Email: james.muenker@us.dlapiper.com